IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No.426/2003

Date of Decision :10.5.2007.

Suram Singh. …Petitioner.

Versus:

Union of India and others. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the petitioner: Mr.Praneet Gupta, Advocate.

For Respondents. Mr.Janesh Mahajan, Central Govt. Counsel.

Sanjay Karol, J (Oral).

The present petition has been filed with the following relief(s):

"It is, therefore, respectfully prayed that the appropriate writ, direction or order may kindly be passed in favour of the petitioner and against the respondents to the following effects:

(i) Directing the respondents to produce entire record of the fixation/refixation of pension of the petitioner, as petitioner has nothing with him except the record produced with him in the writ petition as according to the petitioner Honorary Rank of Naib Subedar was conferred on him as far as back in the year 1984 and the refixation was again done in the year 1996 giving him the benefits as applicable to the Honorary Rank, as he is duly fulfilling the qualification of Honorary Naib Subedar.

(ii) To direct the respondents to allow the petitioner same benefits of pension as already been disbursed to the petitioner with effect from 1.1.1996 till June 2002.

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

> (iii) To direct the respondent not to effect any recovery on the basis of refixation of pension mentioned in Annexure P-2.
>
> (iv) To quash the order of refixation on 22nd April 2002 Annexure P-3 and Annexure P-8 dated 22nd January 2003 by directing the respondents to maintain the pension and other benefits as paid to the petitioner at the rate of Rs.2,277/- p.m. which petitioner had withdrawn in June, 2002."

When the matter was taken up for hearing, the learned counsel for the petitioner stated that considering the reply, he is pressing prayer-(iii) only.

Having served the respondents-Army for over a period of 24 years, the petitioner retired on 31st March, 1984 as Havildar. As per the pension certificate, he was awarded "Honorary" rank of Naib Subedar and accordingly his pension was fixed . He continued to receive the pension from 1984 till 2002 . However, in terms of respondents' letter dated 17th June, 2002 (Annexure:P-3/A) he was informed that his pension has been revised as consolidated @ Rs.1979/- w.e.f. Ist January, 1996 for life. This order actually reduced his pension and the pension based on the Honorary rank of Naib Subedar was withdrawn having been wrongly fixed. The excess amount paid by the respondents to the petitioner from 1984 till 2002 is sought to be recovered and is also the subject matter of the present writ petition.

In the reply, the respondents have stated that the petitioner was not granted "honorary" rank of Naib Subedar at all and consequently he was not entitled for the pensionery benefit in terms thereof. The fact that his pension was revised in the year 1984, though wrongly on the basis of the honorary rank of Naib Subedar and was uninterruptedly paid till 2002 is not disputed. This is also borne out from Annexure:R/1 to the affidavit which has been filed by the respondents pursuant to the order dated 3rd January, 2005 passed by this Court.

The petitioner does not dispute the re-fixation of the pension in terms of order dated 17th June, 2002, however, he is now praying that the

amount already paid to him should not be recovered. In my view, the respondents cannot recover the amount for two reasons: (i) that no show cause notice for recovery of the same has been issued to the petitioner prior to having taken measures in that regard. Suddenly the respondents woke up after 17 years and without inquiry and in violation of Principles of natural justice unilaterally revised the order and withdrew the pension. This is not permissible in law as it entails civil consequences. (ii) that the learned counsel has relied upon the decision rendered by the apex Court in Kerala State Road Transport Corporation Vs. K.O.Varghese and others (2003) 12 Supreme Court Cases 293 whereby it was held that the pension, though wrongly fixed and disbursed, could not be recovered after a period of 26 years. In my view, in the instant case, pension is sought to be recovered after a period of 17 years which is highly inequitable. There has been no fault of the petitioner. It is not the case of the respondents that there has been mis-representation or suppression on the part of the petitioner in getting such benefits. In my view, this would be highly unjust and inequitable for the respondents to recover the amount which was disbursed to the petitioner.

The writ petition is accordingly allowed to the extent of prayer (iii) with the direction that the amount already disbursed to the petitioner towards his pensionery benefit w.e.f. 1984 till December, 2002 shall not be recovered. It is clarified that for the present the pensionery benefit of the petitioner shall be disbursed in terms of letter dated 17th June, 2002 or as may be admissible now in accordance with law .The writ petition is accordingly allowed with no order as to costs.

(Sanjay Karol),
Judge.

May 10, 2007(R)